Supreme Court, U.S.
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No. 00-1781

In The

Supreme Court of the United States

OAKLAND HOUSING AUTHORITY, HAROLD DAVIS,

Petitioners,

v.

PEARLIE RUCKER, HERMAN WALKER, WILLE LEE, BARBARA HILL,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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PETITIONERS OAKLAND HOUSING AUTHORITY AND HAROLD DAVIS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

Petitioners Oakland Housing Authority ("OHA") and Harold Davis (collectively "petitioners") respectfully reply to Respondents' Pearlie Rucker, Herman Walker, Willie Lee and Barbara Hill's (collectively "respondents") opposition to Petitions for Writ of Certiorari filed by petitioners and the United States Department of Housing and Urban Development ("HUD").

I. A BASIS FOR CERTIORARI IS ESTABLISHED

A. Review Is Proper Because A Conflict Exists Between Rucker and State Courts Concerning the Meaning of 42 U.S.C. § 1437d(l)(6).

A principal purpose for which the Supreme Court uses its certiorari jurisdiction is to resolve conflicts among the United States courts of appeals and the state courts concerning the meaning of provisions of federal law. *Braxton v. United States*, 500 U.S. 344, 347, 111 S.Ct. 1854, 1857, 114 L.Ed.2d 385 (1991), citing Supreme Court Rule 10.1.

The *Rucker* court and the Supreme Court of Tennessee in *Memphis Housing Authority v. Thompson*, 38 S.W. 3d 504 (2000), interpreted 42 U.S.C. § 1437d(l)(6) to determine whether local public housing authorities ("PHA") had authority to evict for drug-related criminal activity by tenants, household members, guests and/or other persons. The two courts arrived at conflicting interpretations of subsection (6).

The *Thompson* court expressly held:

> After due consideration, we hold that the lease agreement imposes strict liability for drug-related criminal activity engaged in by the tenant or any household member but permits eviction for the drug-related criminal activity of "guests and other persons under [the tenant's] control" only if the tenant knew or should have known of the drug-related criminal activity and failed to take reasonable steps to halt or prevent the illegal activity.

Thompson, 38 S.W. 3d at 505.

The *Rucker* court held that knowledge of the drug-related criminal activity by the tenant was required to evict for conduct by household members outside the tenant's unit. OHA App. at 28. The *Rucker* holding is in direct conflict with the holding in *Thompson* to the extent they relate to household members.

Kokkonen v. Guardian Life Insurance Company of America, 511 U.S. 375, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994), cited by respondents, is inapplicable. In *Kokkonen*, the issue was whether the district court had jurisdiction to enforce a settlement agreement wherein the underlying case was dismissed by stipulation without reference to continued jurisdiction over the matter. *Id.* at 511 U.S. 376-377, 114 S.Ct. 1674-1675. No case law existed to support the district court's jurisdiction, other than through an impermissibly expansive reading of the holding in *Julian v. Central Trust Co.*, 193 U.S. 93, 24 S.Ct. 399, 48 L.Ed. 629 (1904). *Kokkonen, supra*, 511 U.S. at 381-382, 114 S.Ct. at 1677. That is not the case here.

Respondents quibble that *Thompson* did not issue a "holding" regarding household members. However, the language in *Thompson* speaks for itself and "[t]his Court's appellate jurisdiction does not turn on such semantic niceties." *Walters v. National Association of Radiation Survivors*, 473 U.S. 305, 317, 105 S.Ct. 3180, 3187, 87 L.Ed.2d 220 (1985).

In addition, *Rucker* affirmed the district court's grant of preliminary injunction and directives related thereto, including permission to pursue evictions when drug-related activity occurs within a tenant's apartment, creating a rebuttable presumption that a tenant controls what occurs in his or her unit. OHA App. at 29a-30a. The *Rucker* court explained "these directives are perfectly consistent with our interpretation of control in § 1437d(l)(6)." OHA App. at 30a.

Thompson reflects no such rebuttable presumption and, indeed, held otherwise. The *Thompson* court explained:

> The phrase "under the resident's control" permits eviction only if MHA establishes that Thomas knew or should have known of the drug-related criminal activity "of a guest or other person" and failed to take reasonable steps to prevent or halt it.

Thompson at 512-513.[1]

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[1] After *Thompson* was decided, HUD issued revised regulations which, among other things, clarified the meaning of "under the tenant's control." In that regard, the phrase relates to "other persons," and not "guests." See 24 C.F.R. § 966.4(f)(12)(i), (ii). Based on the *Thompson* court's reliance on HUD regulations, presumably the court would have decided differently if faced

Hence, contrary to respondents' position, the holding in *Thompson* is not "in fact entirely consistent with *Rucker*," even with regard to drug-related conduct by guests within a tenant's unit.

Further, respondents' interpretation of *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700 (1999), is incomplete. One of the primary issues before the *Lor* court was to "determine PHA eviction powers." *Id.* at 702. The *Lor* court decided the matter by interpreting the United States Housing Act and related HUD regulations, as did the courts in *Rucker* and *Thompson*. *Id.* at 702-703. The *Lor* court held the local housing authority was allowed to evict a tenant due to her son's criminal activities at a neighboring residence, even though the tenant did not have any knowledge of her son's criminal activities or reason to anticipate her son's acts. *Id.*

A clear conflict exists between *Lor* and *Thompson*, on the one hand, and *Rucker*, on the other hand. Only this Court can resolve the conflict that now exists.

B. The Question Presented Is Appropriate for Review.

There is no bar to the Court's review of nonfinal judgments of the lower federal courts and, if necessary, reversing a court of appeal's judgment in summary disposition fashion. *Mazurek v. Armstrong*, 520 U.S. 968, 975,

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with the same issue today and held that tenants are strictly liable, not only for drug-related criminal activities by the tenants and household members, but drug related criminal activities of guests. See *Thompson, supra*, 38 S.W. 3d at 512-513.

117 S.Ct. 1865, 1868, 138 L.Ed.2d 162 (1997); *Walters v. National Association of Radiation Survivors*, 473 U.S. 305, 317, 105 S.Ct. 3180, 3187, 87 L.Ed.2d 220 (1985).

By its interpretation of subsection (6), the *Rucker* court set the standard to be used in this case and every case to follow in the circuit for tenant evictions for criminal activity. In affirming the grant of preliminary injunction, the court of appeals set the legal standard, and "[a]dditional findings on the merits" will have no impact on the court's interpretation of the law. Any factual findings and/or burdens of proof that may be set forth by the district court will not change the standard.

Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook Railroad Co., 389 U.S. 327, 88 S.Ct. 437, 19 L.Ed.2d 560 (1967), is inapplicable. The *Bangor* case involved the scope of an arbitration award issued in a union dispute. This Court denied certiorari in *Bangor* because the court of appeals remanded for further findings prior rendering a decision regarding the issue before it relating to violations of a temporary restraining order. *Id.* 389 U.S. at 327-328, 88 S.Ct. at 438. Contrary to *Bangor*, the *Rucker* court rendered its ruling on the issue before affirming the grant of preliminary injunction and the meaning of federal law.

Further, respondents' argument that an erroneous interpretation of the law is not a basis for review in this case lacks merit. In the two cases cited by respondents in support of their position, this Court granted certiorari. See *Ross v. Moffitt*, 417 U.S. 600, 604, 94 S.Ct. 2437, 2441, 41 L.Ed.2d 341 (1974) and *Watt v. Alaska*, 451 U.S. 259, 264, 101 S.Ct. 1673, 1677, 68 L.Ed.2d 80 (1981).

In the concurring opinion cited by respondents in *Watt, supra,* Justice Stevens joined in the majority opinion on the merits. *Watt* at 451 U.S. at 276, 101 S.Ct. 1683. However, he wrote a concurring opinion to voice his disagreement to the extent certiorari was granted to review the court of appeals' interpretation of the federal Wildlife Refuge Revenue Sharing Act of 1935, which interpretation "did not conflict with any other judicial decision and there is no reason to anticipate that a comparable issue will arise in another Circuit in the foreseeable future." *Id.*, 451 U.S. at 274, 101 S.Ct. at 1682. As in *Watt,* petitioners here ask for review of the court of appeals' interpretation of federal law. However, in addition, petitioners submit the interpretation rendered by the court of appeals conflicts with interpretations of the same law by state courts and, it is undisputed, that the issue will arise in the near future in federal and state courts. Hence, *Watt* supports certiorari in this case.

The issue in *Ross,* a criminal case, was whether an indigent defendant was entitled to appointment of counsel on his petitions for review by the State Supreme Court and the U.S. Supreme Court. *Ross* at 417 U.S. 602-603, 94 S.Ct. at 2440. The Court held he was not, but explained he also was not denied fair access to either court in light of the record below and the courts' discretionary review. *Id.* at 417 U.S. at 615-617, 94 S.Ct. at 2446-2447.

The law as interpreted by the court of appeals is set by *Rucker* and it conflicts with other courts. Contrary to respondents' position, the Court has discretion to grant review here.

C. *Rucker* Has Immediate Consequences On Local PHAs and Other Tenants.

The immediate consequences of *Rucker* on local PHAs is the inability to provide safe, decent and affordable housing to other tenants to which they are entitled. Instead, these tenants live in danger and in fear of violence every day that local PHAs are unable to rid violence related to drug-related crime as intended by Congress. The obstacles local PHAs must overcome under *Rucker* to evict for drug-related criminal activity are not required under federal law. This reason supports certiorari. See *Mazurek, supra,* at 975, 1868.

II. THE COURT SHOULD NOT, AND IS NOT REQUIRED TO, WAIT AND SEE HOW OTHER FEDERAL COURTS WILL HANDLE THE ISSUE BEFORE ACCEPTING REVIEW.

The Supreme Court Rules provide for review under circumstances other than conflicts within the federal courts as suggested by respondents, including conflicts among the United States courts of appeals and the state courts concerning the meaning of provisions of federal law. *Braxton v. United States,* 500 U.S. 344, 347, 111 S.Ct. 1854, 1857 (1991); Supreme Court Rules 10(a) and (c).

Respondents suggest this Court sit and wait while the "government's practices . . . be allowed to percolate below to determine whether federal courts reach uniformity or conflict in interpreting section 1437d(l)(6)." The

suggestion lacks merit and calls for an unwarranted delay that may cause irreparable harm to other tenants.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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